IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 21422 of 2006(A)

OPMV.1448/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM

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PETITIONER:

SALIM MATHEW, S/O.MATHEW,
AGED 38 YEARS, KOOVAPLACKAL HOUSE,
KARIMKUNNAM, THODUPUZHA.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

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1. VASU, S/O.PAPPU,
SUNITHA BHAVAN, MURIYAMANGALAM KARA,
MAMALA P.O., ERNAKULAM.

2. SUNITHA, D/O.RADHA,
SUNITHA BHAVAN, MURIYAMANGALAM KARA,
MAMALA P.O., ERNAKULAM.

3. ANITHA, D/O.RADHA,
SUNITHA BHAVAN, MURIYAMANGALAM KARA,
MAMALA PO., ERNAKULAM.

4. SAJI K.JOHN, KOTTARATHU VEEDU,
KARIMKUNNAM, THODUPUZHA.

5. THE NATIONAL INSURANCE CO.,
THODUPUZHA.

R5 BY ADV. SRI.RAJAN P.KALIYATH
R2 & R3 BY ADV.SRI.K.GOPALAKRISHNA KURUP
SRI.S.MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 21422 OF 2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PETITION IN OP(MV) NO.1884 OF 1994 FILED BY RESPONDENT 1 TO 3 ASPETITIONERS BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM.

EXT.P2 : TRUE COPY OF THE EXECUTION PETITION IN OP(MV) NO.1448 OF 1994 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM.

EXT.P3 : TRUE COPY OF THE AWARD DATED 16.2.05 IN OP(MV) NO.1448 OF 1994.

EXT.P4 : TRUE COPY OF THE RESTORATION APPLICATION, WHICH IS FILED AS IA NO.3062/2003 IN OP(MV) NO.1448 OF 1994 DATED 6.5.03.

EXT.P5 : TRUE COPY OF THE ORDER IN IA NO.3062 OF 2003 IN OP(MV) NO.1448 OF 1994 DATED 14.02.2005.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 21422 OF 2006

Dated this the 7th day of November, 2007

JUDGMENT

Under challenge in this Writ Petition under Article 227 are Exts.P3 and P5 orders passed by MACT, Kottayam on an application for restoration of OP(MV) No.1448/94 which was dismissed for default and and an application for condonation of delay of 561 days caused in the matter of filing the restoration application.

The Writ Petitioner is the owner of the vehicle in question. Since there was no insurance policy in respect of the vehicle it is the petitioner who has become liable to pay the award under Ext.P3. On going through the materials available and on hearing the submissions addressed at the Bar by Sri.M.J.Thomas,counsel for the petitioner and Sri.S.Manu, counsel for the respondent, it has become transparently clear that the writ petitioner had not been served with notice of the restoration application and the application for condonation of delay. That being the position, Exts.P3 and P5 are liable to be set aside on that reason. I am inclined to set aside Exts.P3 and P5 only by imposing conditions. Exts.P3 and P5 will stand set aside and restoration application and application for condonation of delay will go back to MACT, Kottayam on condition that the petitioner deposits a further

amount of Rs.25,000/- towards the claims in MV(OP) No.1448/94 within one month from today. Once the deposit is made, the claimants will be entitled to withdraw the amount. Once deposit is made as above, the learned MACT will invite objections to the delay petition and as well as restoration petition, consider those objections, hear the parties and pass fresh orders on the two petitions. Fresh orders as directed above will be passed within six weeks of receiving copy of this judgment. If orders comes to be in favour of the claimants, the Tribunal will expedite the trial and disposed of OP(MV) No.1448 of 1994 and giving top priority to the case, since the same is of the year 1994.

PIUS C. KURIAKOSE, JUDGE

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